

Apply these factors to the instant case, the Plaintiff clearly knew of the obligation to file a motion for judgment on the record and the result if he failed to do so. (Docket Entries 11 and 15). The Magistrate Judge has directed the Plaintiff in two separate orders to file his motion with supporting brief or face dismissal of his action. (Docket Entries 11 and 15). Additionally, the Magistrate Judge has given the Plaintiff additional time in which to file his brief and the Plaintiff has failed to file anything with the Court. (Docket Entry 15). Lastly, the Defendant is certainly prejudiced by the Plaintiff's delay in failure to file anything with the Court, in spite of Court orders.

In light of the forgoing, the Magistrate Judge **recommends** that Plaintiff's case be **dismissed** without prejudice for failure to prosecute.

Any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objection to it with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004 (en banc)).

ENTERED this 7th day of April, 2009.

So **ORDERED**.



/s Joe B. Brown
JOE B. BROWN
UNITED STATES MAGISTRATE JUDGE